



UNITED STATES PATENT AND TRADEMARK OFFICE

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TECHNOLOGY CENTER 3600

Commissioner for Patents  
United States Patent and Trademark Office  
P.O. Box 1450  
Alexandria, VA 22313-1450  
www.uspto.gov

Thomas Thompson  
92-543 Kokole Place  
Makakico, HI 96707

In re Application of :  
Thomas Thompson : DECISION ON RENEWED  
Application No. 09/690,657 : PETITION TO WITHDRAW THE  
Filed: March 2, 2001 : HOLDING OF ABANDONMENT  
For: HURRICANE AND STORM PROTECTION  
LARGE WINDOWS AND DOORS

This is in response to applicant's renewed petition to withdraw the holding of abandonment filed in the United States Patent and Trademark Office (USPTO) on August 16, 2004. The delay in responding to this petition is regretted.

The petition is **DISMISSED**.

A review of the file records reveals that the application was held abandoned for failure to timely file a reply to the Notice of Non-Compliant Amendment mailed August 11, 2003. This letter was mailed in response to the amendment filed July 22, 2003.

Petitioner states that the Notice of Non-Compliant Amendment mailed August 11, 2003 was not received. However, petitioner indicates that a correspondence was received around the middle of August, 2003, that was addressed to the applicant, but had a different named applicant and different application number. The petitioner indicates that a copy of the correspondence received around the middle of August, 2003, was included with the renewed petition. Petitioner also indicates that when a communication from the USPTO is received the petitioner marks in his inventor's logbook the due date that the correspondence is due at the Office.

There is a strong presumption that mail properly addressed and delivered to the United States Postal Service was in fact delivered to the addressee. An allegation that an Office communication was not received may be considered in a formal petition for the withdrawal of the holding of abandonment, in accordance with *Delgar Inc. v. Schuyler*, 172 USPQ 513. However, the presumption that the Office communication was delivered to applicant may be overcome by a showing that the communication was not, in fact, received as indicated below.

Since the application is pro se, statements of non-receipt should include a statement by the applicant, and by anyone else at applicant's correspondence address, who would have handled the Office communication, and include any available documentary evidence of mail received, covering a reasonable period after the date of the Office communication, to show non-receipt of the communication in question. Copies of records on which the receipt date of the Office communication would have been entered had it been received, (e.g., a copy of the

outside of the file maintained by applicant), are required if available. Also, a showing of any docket records or other method which would serve as a reminder of a response due date should be submitted. Whatever method applicant uses as a reminder, and submits in response to this decision should be adequately explained. Also, a statement is required that a search of the file maintained by applicant, or any other location where correspondence from the USPTO is kept, failed to find a copy of the Office communication in question. Finally, applicant must state that he was in fact at the correspondence address of record at the time the Office action would have been received.

Any such exhibits should be submitted as part of statement(s) showing that no Office communication was ever received.

Applicant's renewed petition of August 16, 2004, failed to include a copy of any available documentary evidence of mail received, covering a reasonable period after the date of the Office communication, to show non-receipt of the communication in question and copies of records on which the receipt date of the Office communication would have been entered had it been received. Petitioner indicates that an inventor's logbook is kept but failed to include a copy as proof of non-receipt of the Office communication. Petitioner also failed to include a copy of the correspondence received in the middle of August, 2003, which the petitioner indicated included a different serial number and different inventor name.

Applicant may wish to consider filing a petition to revive under 37 CFR 1.137(a) (unavoidable delay) or 37 CFR 1.137(b) (unintentional delay) as discussed below.

#### I. Unavoidable Delay

A grantable petition to revive an abandoned application under 37 CFR 1.137(a) must be accompanied by: (1) the required reply (unless previously filed), which may be met by the filing of a continuing application in a nonprovisional application abandoned for failure to prosecute; (2) the petition fee required by 37 CFR 1.17(l); and (3) an adequate showing to the satisfaction of the Commissioner that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(a) was unavoidable.

The showing requirement can be met by submission of statements of fact establishing that the delay in filing the reply was unavoidable. This includes a satisfactory showing that the cause of the delay resulting in failure to reply in a timely fashion to the Office action was unavoidable. Diligence during the time period between abandonment and filing of the petition to revive must also be shown.

As an alternative to filing a petition for unavoidable abandonment, a petition for revival of an application abandoned unintentionally under 37 CFR 1.137(b) might be appropriate.

## II. Unintentional Delay

A grantable petition to revive an abandoned application under 37 CFR 1.137(b) must be accompanied by: (1) the required reply (unless previously filed), which may be met by the filing of a continuing application in a nonprovisional application abandoned for failure to prosecute; (2) the petition fee required by 37 CFR 1.17(m); and (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional.

If not previously filed, the reply to the outstanding Office action must accompany the petition to revive. The required items should be promptly submitted under a cover letter entitled "Petition to Revive."

Further correspondence with respect to a petition to revive should be addressed as follows:

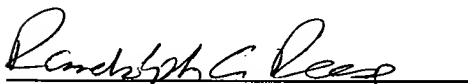
By Mail: Deputy Commissioner of Patent Examination Policy  
Box 1450  
Alexandria, VA 22313-1450

By Fax: (571) 273-8300  
Attn: Office of Petitions

By Hand: Customer Service Window  
Randolph Building  
401 Dulany Street  
Alexandria, VA 22314

Telephone inquiries should be directed to the Office of Petitions Staff at (571) 272-3282.

Any request for reconsideration of this decision must be submitted within **TWO (2) MONTHS** from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.181" and should be mailed to the Commissioner for Patents, P.O. Box 1450, Technology Center 3600, Alexandria, VA 22313-1450.



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